IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

TRC.No. 133 of 2001()

TA.572/1995 of KERALA SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM..
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REVISION PETITIONER/APPELLANT/RESPONDENT/REVNUE:

STATE OF KERALA, REPRESENTED BY
DEPUTY COMMISSIONER (LAW)
COMMERCIAL TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SHRI V.V. ASOKAN.

RESPONDENT/RESPONDENT/APPELLANT/ASSESSEE:

M/S. PARK HOTEL,
KOZHENCHERRY.

BY ADV. SRI.V.P.SUKUMAR

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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TAX REVISION CASE No. 133 OF 2001

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Dated this the 18th June, 2007

O R D E R

H.L. Dattu, C.J.:

1. Delay in filing the Revision Case has already been condoned.

2. Admit.

3. Heard the learned counsel for the parties to the lis.

4. This Revision Case is preferred by the Revenue against the orders passed by the Kerala General Salex Tax Appellate Tribunal in T.A.No. 572 of 1995 dated 23rd June, 2000 for the assessment year 1992-93.

5. The Revenue has raised the following questions of law for our consideration and decision. They are as under:

"a) Were not the First Appellate Authority as well as the Tribunal in error in holding that the turnover relating to the empty bottles is not taxable?

b) Is the Tribunal correct in law in holding that bottles have already suffered tax with its contents

and therefore turnover of bottles is not exigible to tax?

c) Is not the conclusion that empty bottles are not exigible to tax against the ratio settled in (2000) 8 KTR 480? "

6. At the time of hearing of this Revision Case, Shri V.V. Asokan, learned Special Government Pleader for Taxes, brings to our notice that the Revenue, being aggrieved by the common order passed by the Tribunal in T.A.No. 573 of 1995 dated 23rd June, 2000, was before this Court in TRC. 200 of 2001 and that this Court has allowed the Revision Petition and has answered the questions of law framed by the Revenue in favour of the Revenue and against the assessee by its order dated 11th April, 2003. Therefore, he submits that this court need to follow the aforesaid order and answer the questions of law raised in this Revision Case in favour of the Revenue.

7. Per contra, learned counsel for the assessee would submit that the Division Bench of this court while disposing of TRC No.200 of 2001 had not noticed the earlier decision of the Division Bench of this Court.

8. In the present case, it so happens that, the common order has been passed by the Sales Tax Appellate Tribunal in T.A.Nos. 572 and 573 of

1995 by order dated 23rd June, 2000. The Revenue had carried both the matters by way of Revision Cases before this Court. It so happened that this Court had considered the Revision case filed against the orders passed in T.A. No. 573 of 1995 and had answered the questions of law framed by the Revenue in favour of the Revenue and against the assessee.

9. Since the order passed by the Tribunal was a common order and since the Revenue has filed Revision Cases in both the appeals, in our opinion, the same treatment requires to be given to the present Revision Case also. Therefore , we do not accept the submission made by the learned counsel for the assessee.

10. The Division Bench of this court, after a detailed consideration of the rival contentions canvassed by the parties to the lis, has stated as under:

> *"We have perused the said judgment. We find that the Division Bench of this Court after considering the provisions regarding the levy of tax held that though IMFL had suffered tax as contained in the containers, there is no distinct sale of liquor and bottles separately and as such levy of tax on the bottles is in order. In the light of the decision of this Court as above, we are of the view that the tribunal*

erred in holding that empty bottles cannot be subjected to tax since the same had already suffered tax with its contents. We accordingly set aside both the appellate orders on this point and hold that levy of tax on empty bottles made by the assessing authority is in order."

11. We agree with the observations made by this Court in the aforesaid Tax Revision Case.

12. Respectfully following the observations made in the aforesaid decision, this Revision Case is also disposed of. The questions of law framed by the Revenue is answered in favour of the Revenue and against the assessee.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.

TAX REVISION CASE No. 133 OF 2001

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H. L. DATTU, C.J. &
K.T. SANKARAN, J.

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T.R.C. No. 133 OF 2001

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Dated this the 18th June, 2007

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